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Attorneys for Plaintiff GO SMiLE, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

GO SMiLE, INC., a Delaware
corporation,

X
:
:
No. 10 CV 8663 (PKC)

Plaintiff,

:
:
DECLARATION OF
WENDI E. SLOANE

DR. JONATHAN B. LEVINE, D.M.D. P.C.,
a New York Corporation; and DR. JONATHAN B.
LEVINE, an individual,

Defendants.

:
:
:
X

WENDI E. SLOANE, hereby declares, under penalty of perjury pursuant to 28
U.S.C. § 1746, as follows:

1. I am a partner of the law firm Barack Ferrazzano Kirschbaum & Nagelberg LLP, co-counsel with Flemming Zulack Williamson Zauderer LLP on behalf of Plaintiff GO SMiLE, Inc. (“GO SMiLE”) in the above-captioned matter. I submit this declaration in support of GO SMiLE’s Request for a Temporary Restraining Order to enjoin the February 1, 2011 launch of defendants’ products on the Home Shopping Network (“HSN”) pending the preliminary injunction hearing which has been continued to February 8 or February 16, 2011, depending on this Court’s trial calendar.

2. After the January 26, 2011 status conference, Defendants informed me that they intend to proceed with the launch of their products on HSN, under the trademarks GLO, G.L.O., GLO SCIENCE, GLO BRILLIANT, and other marks bearing the GLO-prefix (collectively, the “GLO Trademarks”). Attached hereto as Exhibit 1 is an HSN webpage printout of the February 1, 2011 program schedule.

3. Because defendants were not willing to accept the settlement structure articulated at the January 20, 2011 hearing, the preliminary injunction hearing is scheduled to reconvene either Tuesday, February 8, 2011 or Wednesday, February 16, 2011, depending on the Court’s schedule.

4. Yesterday, we gave notice via e-mail to defendants’ counsel of our intention to file an application for a temporary restraining order. Attached hereto as Exhibit 2 is an e-mail from Jonathan D. Lupkin to defendants’ counsel, dated January 27, 2011.

5. According to HSN’s webpage, the channel possesses “strong direct-to-consumer expertise” and “reaches 90 million homes (24 hours a day, seven days a week,

live 364 days a year)." Attached hereto as Exhibit 3 is an HSN webpage printout of the company overview.

7. Attached hereto as Exhibit 4, are pertinent portions of the January 20, 2011 preliminary injunction hearing transcript.

8. Attached hereto as Exhibit 5, is a copy of the January 26, 2011 status conference transcript.

9. Attached hereto as Exhibit 6, collectively, are photographs of GO SMiLE's products admitted into evidence.

10. Attached hereto as Exhibit 7, collectively, are photographs of defendants' products admitted into evidence.

11. Attached hereto as Exhibit 8, collectively, are GloScience LLC's applications to register the trademarks GLO BRILLIANT and GLO (and design).

12. Up until now, plaintiff has not sought the issuance of a temporary restraining order in this action. Accordingly, no prior request has been made for the relief requested herein.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 28, 2011 in New York, New York.



WENDI E. SLOANE